

**SECTION 101 CHILDREN'S PRODUCTS CONTAINING LEAD;  
LEAD PAINT RULE  
FREQUENTLY ASKED QUESTIONS**

**Q: In interpreting section 101(f) of the CPSIA and 16 CFR § 1303.1, to what does the 90 ppm lead in surface-coating limit apply?**

**A:** The lead limit in paint and surface coatings applies to (i) paint and other similar surface coatings; (ii) toys and other articles intended for use by children; and (iii) certain furniture articles that are not otherwise exempt under our regulations.

**Q: What furniture articles are exempt under CPSC regulations? Do the lead paint limits apply to furniture whether or not the furniture is intended for children?**

**A:** 16 C.F.R. § 1303.1 provides that the lead paint limits apply to toys and other articles intended for use by children, as well as furniture articles for consumer use that bear lead-containing paint. Furniture articles include, but are not limited to beds, bookcases, chairs, chests, tables, dressers, desks, pianos, console televisions, and sofas. However, they do not include appliances such as ranges, refrigerators, dishwashers, clothes washers and dryers, air conditioners, humidifiers and dehumidifiers; fixtures such as bathroom fixtures, built-in cabinets, chandeliers, windows, and doors; or household items such as window shades, venetian blinds, or wall hangings and draperies.

**Q: 16 CFR part 1303 states that the liquid paint (e.g., a can of paint) must meet 600 ppm, I am curious as to how children's products can meet 90 ppm unless the paint manufacturers lower the limit. Are the paint manufacturers required by law to meet 90 ppm?**

**A:** Yes. Paint sold for consumer use must meet the 90 ppm limit by August 14, 2009 under 16 C.F.R. part 1303, which will be revised to reflect the 90 ppm lead limit specified in the CPSIA. The exemptions from the ban provided under 16 C.F.R. § 1303.3 continue to remain in effect.

**Q: Can someone import a product that has lead based paint on it? The product in question is a type of "stilt" that professional painters use to reach high ceilings and walls.**

**A:** The lead paint limits only apply to certain products as described above and only apply to consumer products. In your example, the lead paint and lead content limits do not apply. Generally, a painter's stilt is not a "consumer product" as defined under section 3 of the Consumer Product Safety Act. For example, it is not customarily sold to or used by a consumer, but rather, by professional painters in the scope of their employment. Moreover, painter's stilts are not children's products under the CPSIA.

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**Q: Do all children's products require testing for lead or is it only products with some type of surface coating? We sell products that are used in physical education classes (e.g. hula-hoops) that are made from polyethylene and are not painted or coated. Will this product require third-party testing and certification for lead content under the new CPSIA?**

**A:** All children's products (as defined by the CPSIA) subject to the lead limit of the Act will eventually require testing for lead, not just those with surface coatings. It is important to distinguish between the rules that apply to lead paint and surface coatings and the rules that apply to lead content. The CPSIA provides limits to the amount of lead in paint and surface coatings and limits to the amount of lead in the content of the product itself. Children's products that are painted, or have surface coatings are also subject to the lead paint limit, *in addition to* the lead content limits.

**Q: When do the lead paint limits go into effect for children's products?**

**A:** The lead *paint* limit is currently 600 ppm for children's products. It will be lowered to 90 ppm on August 14, 2009.

**Q: What certifications are required for children's products that are tested for lead paint?**

**A:** For currently effective lead paint limits (600 ppm), general conformity certification is required for products manufactured after November 12, 2008 based on a test of the product or a reasonable testing program for products. Third-party testing of the product for currently effective lead paint limits by accredited third party laboratories is required for products manufactured after December 21, 2008.

When the lead paint limit is lowered to 90 ppm on August 14, 2009, third-party testing by accredited third party laboratories will be required for children's products manufactured after that date.

**Q: When do the lead content limits go into effect for children's products?**

The lead *content* limits for all children's products go into effect February 10, 2009 (600 ppm) and will be lowered again on August 14, 2009 (300 ppm).

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**Q: What certifications are required for children’s products that are tested for lead content?**

Children’s products manufactured after February 10, 2009, when the lead limit may not exceed 600 ppm, will need a general conformity certification based on a test of the product or a reasonable testing program for products after that date. Children’s products manufactured after August 14, 2009, when the lead limit may not exceed 300 ppm, will have to be certified based on third-party testing of the product by accredited third party laboratories after that date.

**Q: If you have a “children’s product” with possible lead content, do you have to have a certificate on November 12, 2008, even though the lead rule is not effective?**

A: No. The lead content limits for children’s products do not go into effect until February 10, 2009. As stated above, children’s products manufactured after February 10, 2009 (600 ppm), will need a general conformity certification based on a test of the product or a reasonable testing program for products and children’s products manufactured after August 14, 2009 (300 ppm), will have to be certified based on third-party testing of the product by accredited third party laboratories.

**Q: Are outdoor playground products covered by CPSIA section 101 lead limits?**

A: The lead paint limits have always applied to outdoor playground equipment and continue to apply under the CPSIA. In addition section 101, entitled “Children’s products containing lead; lead paint rule” imposes lead content limits on all children’s products, which includes outdoor playground equipment. Thus, outdoor playground products that will be used primarily by children 12 years of age or younger fall within the scope of the lead provisions of the CPSIA.

**Q: Will toys manufactured outside the United States be allowed to be imported to the US for lead testing or will the testing have to be performed outside the US (and pass the new standards) prior to being imported into the US?**

A: Manufacturers may submit samples of products for testing in the United States without certifying them. However, before shipping any products other than these samples, *i.e.*, products imported for consumption or warehousing or distribution in commerce in the United States, the products must have the required certifications.

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**Q: Would the pending legislation for lead limits in children's products apply to video game hardware sold/distributed in the U.S.?**

**A:** Under the CPSIA, the term “children’s product” means a consumer product designed or intended primarily for children 12 years of age or younger. To the extent that video game hardware is intended primarily for children 12 years and younger, it would be subject to the lead limits. The Commission is currently evaluating whether certain electronic devices, including devices that contain batteries, must comply with the lead limit. CPSC has requested comments regarding the upcoming rulemakings on what product components, or classes of components, will be considered inaccessible to a child through ordinary use and abuse and on whether it will be technologically feasible for certain electronic devices to meet the new lead limits.

**Q: Does the CPSIA envision stuffed animals falling within the scope of the CPSIA’s lead limits or phthalate limits?**

**A:** Most stuffed animals would be considered to be children’s products and presumably toys. A manufacturer would need to determine whether the design of the stuffed animals is such that it is subject to the lead paint limits, the lead content limits or the phthalate limits.

**Q: How will the lead in substrate provision be applied to products like strollers, playpens and other juvenile products? Will it be applied to every single part, including rivets?**

**A:** The new lead limits will apply to the total lead content by weight for *any* part of the product. Some children’s products or component part of products may be exempted or excluded from the new lead limits if the parts containing lead are inaccessible. Inaccessible parts do not need to meet the lead limits and the Commission will provide guidance by rule within one year on what component parts are considered inaccessible. Until that time, it is the manufacturer’s responsibility to determine which parts of its products are accessible and therefore must meet the statutory lead limits.

**Q: Is the use of XRF analysis for compliance testing with regard to lead in substrates under consideration or will wet chemistry be the only method used for testing lead content in substrates?**

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A: The use of XRF analysis for lead content is being considered. CPSC Directorate for Laboratory Sciences, Chemistry Division (LSC) will post the methods it will be using on the CPSC website in the next few months.

**Q: Can XRF technology be used to support general conformity certification as to lead paint or lead content limits?**

A: Yes. Where third-party testing by an accredited laboratory is required as the basis for certification, that testing cannot be based on XRF technology at this time; however, XRF testing, either by a manufacturer or by a laboratory, may serve as the basis for general conformity certification. Manufacturers are cautioned, however, to be careful in their use of XRF for this purpose given the difficulties in screening for lead in paint with that technology.

**Q: What test method is CPSC requiring for surface coating lead testing and total lead content testing? When will this information be provided?**

A: The test method for 16 CFR § 1303.1 used by the CPSC Product Testing Laboratory, Chemistry Division (LSC) is available on the CPSC website at: <http://www.cpsc.gov/businfo/leadsop.pdf>. Other laboratories should consider using these procedures to ensure they obtain results that are consistent with CPSC staff’s for purposes of compliance with 16 CFR part 1303. In addition, the LSC is currently developing other testing methodologies to use for total lead content testing, which will be posted on the CPSC website in the next few months.

**Q: We sell craft materials, some packages of beads can have 12 or more colors of beads. Can we composite 3 or more colors at a time to test the beads?**

A: No. Compositing to combine *different* paints or substrates from one or more samples to reduce the number of tests run may fail to detect excessive levels of lead in one individual paint or substrate because of the effect of dilution by non-lead-containing samples. This approach is therefore currently not acceptable. The only exception to “compositing” is when labs have to combine like paint from several like parts or products to obtain a sufficient sample size for analysis because there is an insufficient quantity of paint on one item to perform the testing.

**Q: Are chemistry sets, science education sets and other educational materials excluded from the lead limits for content and paint and surface coatings if they bear adequate labeling under 16 C.F.R. § 1500.85?**

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A: 16 C.F.R. § 1500.85 provides that certain articles that are intended for children for educational purposes are exempt for classification as a banned hazardous substance under the FHSA and the lead limits under CPSIA if the *functional purpose* of the particular educational item *requires* inclusion of the hazardous substance, and it bears labeling giving adequate directions and warnings for safe use, and is intended for use by children who have attained sufficient maturity, and may reasonably be expected, to read and heed such directions and warnings. For example, an electronics kit or robotics kit would be considered educational and the inclusion of a lead-containing component would not subject the kit to the lead testing requirements because the use of lead in some components is required to make the electronic device. Similarly, the materials used for examination or experimentation for science study such as soil, rocks, chemicals, dissections, etc. would also be exempt.

**Q: Are children’s art materials subject to the new lead limits?**

A: Generally yes. To the extent that such art materials are designed or intended primarily for children 12 years of age or younger, they are subject to the lead limits under the CPSIA. Moreover, all art materials, whether or not intended primarily for children, must comply with the Labeling of Hazardous Art Materials Act (LHAMA) codified at 16 C.F.R. § 1500.14(b)(8), which requires that art materials be properly labeled if they present a chronic adverse health effect.

**Q: The tip on ball point pens are made from leaded brass and there is no source for materials as the lead in the brass is required to machine. Is it ok for children to use ball point pens?**

A: The lead ban is applicable to children’s products containing lead. The term “children’s product” means a consumer product designed or intended primarily for children 12 years of age or younger. Accordingly, to the extent that these pens are general purpose items not being marketed to, or advertised as being intended for use by children 12 years or younger, these pens would not be subject to the lead limits under CPSIA.

**Q: Although it is clear that the new lead standards for children’s products cover components as well as the final product, how will CPSC consider borosilicate enamels that are vitrified with the substrate to form a product such as a children’s mug? Would the borosilicate enamel need to meet the standard as if it were a component that is a distinct separate part of that product? Or would the standard**

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**apply only to the finished glass or ceramic item where the borosilicate enamel has been vitrified with the item itself?**

**A:** 16 C.F.R. § 1303.2 (b)(1) provides that paint and other similar surface-coating materials does not include printing inks or those materials which actually become a part of the substrate, such as the pigment in a plastic article, or those materials which are actually bonded to the substrate, such as by electroplating or ceramic glazing. In most instances, when vitrification has occurred, the materials would be considered to be part of the substrate of the product as one whole part for testing purposes.

**Q: A bag factory in China has told me that the new requirement of lead content in the material for children's bags (we are looking at backpacks specifically) is 300 ppm, effective August 14th. Is this a general requirement referred to in the CPSIA legislation or is there somewhere where bags and/or bag materials are referred to specifically? Is there a complete list of products that can be searched and then linked to specific rules for that product, testing requirements, etc.?**

**A:** Section 101 of the CPSIA provides that *any* children's product designed or intended for children 12 years of age or younger, which would also include children's bags, must meet the lead limits. Bags and bag materials are not discussed separately in the legislation. Testing and certification requirements are set forth under section 102 of the CPSIA and are being announced on the CPSC website at <http://www.cpsc.gov/about/cpsia/cpsia.html>.

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